

**TROUTMAN SANDERS**  
ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NATIONSBANK PLAZA  
600 PEACHTREE STREET, N.E. - SUITE 5200  
ATLANTA, GEORGIA 30308-2216  
TELEPHONE: 404-885-3000  
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ROBERT D. (BO) STRAUSS

DIRECT: 404-885-3250

January 12, 1993

3-013A018

18096

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

JAN 13 1993 - 2 55 PM

Re: NationsBank - Wm. C. Meredith Co. **INTERSTATE COMMERCE COMMISSION**

Dear Secretary:

I enclose an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Mortgage and Security Agreement, a primary document, dated January 8, 1993.

The names and addresses of the parties to the document are as follows:

Mortgagor: William C. Meredith Company  
2335 Lawrence Street  
East Point, Georgia 30364

Mortgagee: NationsBank of Georgia, N.A.  
13th Floor, NationsBank Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308

A description of the equipment covered by the document follows:

- one 1941 General Electric 150HP railroad switch engine B-50/50-1GE733, serial # J15097
- one 1963 American Hoist diesel electric railroad crane no. 825DE, serial # J3545

A fee of \$16.00 is enclosed. Please return the original Mortgage and Security Agreement to me at the address shown on this letter.

Secretary  
Interstate Commerce Commission  
January 12, 1993  
Page 2

A short summary of the document to appear in the index follows:

Mortgage and Security Agreement between William C. Meredith Company (mortgagor) and NationsBank of Georgia, N.A. (mortgagee), dated January 8, 1993, covering one switch engine and one railroad crane.

Very truly yours,

*Robert D. Strauss*

Robert D. Strauss  
Attorney for NationsBank  
of Georgia, N.A.

RDS/jw  
Enclosures

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## MORTGAGE AND SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

For value received, William C. Meredith Company, a Georgia corporation (together with its successors or assigns, "Debtor") agrees with NationsBank of Georgia, N.A. ("Secured Party") as follows:

1. **DEFINITIONS.**

When capitalized as below:

"Collateral" shall mean (1) Debtor's 1941 General Electric 150HP railroad switch engine B-50/50-1GE733, serial # 15097, and 1963 American Hoist 825 DE railroad crane, serial # J3545; (2) all additions and accessions to and proceeds of the foregoing (including insurance payable by reason of loss or damage); and (3) all documents, documents of title, and books and records of Debtor relating to the property described in clauses (1) and (2).

"Event of Default" shall have the same meaning as in the Financing Agreement.

"Financing Agreement" shall mean the March 9, 1989 Receivables Financing Agreement between Secured Party and Debtor, as in effect on the date of this Agreement (including the effect of the Amendment No. 1 to Restated Financial Arrangements, dated as of the date of this Agreement, between Secured Party and Debtor).

"Liabilities" shall mean all obligations of Debtor hereunder, all obligations of Debtor under the Financing Agreement (including specifically any advances and over-advances made thereunder), all notes (including the Term Note), all contracts of suretyship, guaranty, or accommodation, and all other obligations of Debtor to Secured Party, however and whenever created, arising, or evidenced, whether direct or indirect, through assignment from third parties, absolute, contingent, or otherwise, now or hereafter existing, or due or to become due.

"Obligor" shall mean Debtor and each other party primarily or secondarily, directly or indirectly liable on any of the Liabilities.

"Term Note" shall mean Debtor's \$660,000 term note in favor of Secured Party, dated the date of this Agreement.

2. **GRANT OF SECURITY INTEREST.**

As security for the payment of the Liabilities, Debtor hereby grants to Secured Party a security interest in the Collateral.

That security interest shall terminate when all Liabilities have been fully and finally paid, if no Event of Default then exists. Promptly after any such termination, Secured Party shall (at Debtor's expense) execute and deliver any instrument evidencing such termination as Debtor reasonably requests.

### **3. DEBTOR'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

Debtor hereby warrants and represents that:

a. The execution, delivery, and performance of this Agreement are within Debtor's corporate powers, have been duly authorized by Debtor's board of directors and by any necessary vote or consent of Debtor's stockholders, are not in violation of law or the terms of Debtor's articles of incorporation, by-laws, or other corporate papers, or of any indenture, agreement, or undertaking to which Debtor is a party or by which Debtor is bound.

b. Debtor has full and absolute title to the Collateral presently existing, free of all security interests, encumbrances, liens, and claims except those permitted by § 5(a) of this Agreement.

### **4. PROTECTION OF COLLATERAL.**

a. The principal and other places of business of Debtor, the Collateral, and the books and records relating to the Collateral are and shall remain located at the addresses set forth below Debtor's signature on this Agreement, and Debtor will not change any of those locations without prior written notice to and prior written consent of Secured Party.

b. Debtor will immediately inform Secured Party in writing of any opening of any new place of business.

c. Debtor will pay when due all taxes, license fees, and assessments relating to the Collateral (except for taxes, license fees, and assessments being contested in good faith (and for the payment of which adequate reserves have been provided) by appropriate proceedings, so long as such proceedings do not involve any material danger of the sale, forfeiture, loss, or loss of use of any Collateral).

d. Debtor will use the Collateral for lawful purposes only, with all reasonable care and caution and in conformity with all applicable laws, ordinances, and regulations.

e. Debtor will at all times keep the Collateral in good operating condition, excepting any loss, damage, or destruction which is covered by proceeds of insurance.

f. Debtor shall insure the Collateral until Secured Party's security interest is terminated against all risks to which the Collateral is exposed and that prudent companies similarly situated insure against, including loss, damage, fire, theft, and all other such risks, in such amounts, with such companies, under such policies and in such form as shall be satisfactory to Secured Party, which policies shall provide that loss thereunder shall be payable to Secured Party as sole loss payee (upon a New York standard mortgagee clause [long form]), and Secured Party may apply any proceeds of such insurance which may be received by it for payment of the Liabilities, whether or not due, in such order of application as Secured Party may determine, and such policies or certificates thereon or duplicates thereof shall immediately be deposited with Secured Party.

#### 5. GENERAL COVENANTS OF DEBTOR.

a. Debtor will at all times keep the Collateral free of all security interests, liens, and claims whatsoever, other than (1) the security interests granted herein, (2) liens for taxes, assessments, or other governmental charges either not yet due or being contested in good faith (and for the payment of which adequate reserves have been provided) by appropriate proceedings, so long as such proceedings do not involve any material danger of the sale, forfeiture, loss, or loss of use of any Collateral, (3) materialmen's, mechanics', workers', repairers', employees', or other like liens arising in the ordinary course of business for amounts the payment of which is not yet due, and (4) liens arising out of any judgment or award that is, within 30 days after entry thereof, discharged, vacated, or appealed with execution thereof stayed pending appeal.

b. Debtor will, at its expense, from time to time, on request of Secured Party, execute such financing statements, notices, certificates of title, and other documents and pay the cost of filing or recording the same, as well as this Agreement, in all public offices reasonably deemed necessary by Secured Party and do such other acts as Secured Party may request to establish and maintain a valid security interest in the Collateral. Debtor hereby constitutes and designates Secured Party as its attorney-in-fact to execute any financing statements or certificates of title to perfect the security interests granted herein or in any other agreement between Debtor and Secured Party.

c. Debtor will not sell, transfer, lease, abandon, or otherwise dispose of any of the Collateral or any interest therein, nor will it waste any of its assets.

d. Debtor shall account fully and faithfully for and promptly pay or turn over to Secured Party proceeds in whatever form received in disposition of the Collateral.

e. Debtor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Debtor and shall keep accurate and complete records of the Collateral and its proceeds.

f. Debtor will notify Secured Party of any intended change in Debtor's name, and will notify Secured Party when such change becomes effective.

**6. SECURED PARTY'S RIGHTS EXCLUSIVE OF DEBTOR'S DEFAULT.**

Secured Party may examine or inspect Debtor's records, the Collateral and all other assets of Debtor or any portion thereof, wherever located, at any reasonable time or times, and may enter upon Debtor's premises for such purposes. Debtor shall assist Secured Party in whatever way necessary to make each such examination and inspection. Secured Party may, in its discretion, for the account and expense of Debtor, pay any amount or do any act required of Debtor hereunder or requested by Secured Party to preserve or protect the Collateral, or maintain or enforce the Liabilities or the primary security interest granted herein, and which Debtor fails to do or pay, and Debtor shall be liable to Secured Party for such expenditures, together with interest thereon at the rate of 15% per annum from the date incurred until reimbursed by Debtor, and all such liabilities shall be secured by the security interests granted herein, and shall be payable upon demand. Debtor will be liable for all damages for breach of warranty, misrepresentation, or breach of covenant by Debtor, and all such liabilities shall be secured by the security interests granted herein, and shall be payable upon demand.

**7. SECURED PARTY'S RIGHTS AND REMEDIES UPON DEFAULT.**

Upon the occurrence of an Event of Default, at the option of Secured Party, the Liabilities, notwithstanding any provisions thereof, without demand or notice of any kind, thereupon immediately shall become due and payable; and Secured Party may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code and other applicable law. Debtor agrees, upon the occurrence of an Event of Default, to cease the sale or other disposition of the Collateral, except with the written consent of Secured Party, and to assemble at Debtor's expense all the Collateral at a convenient place acceptable to Secured Party. Debtor agrees to pay all costs reasonably incurred by Secured Party in the collection of the Liabilities, and enforcement of rights hereunder, and, if collected by or through an attorney, reasonable attorneys' fees not to exceed 15% of the

Liabilities, and also other legal and court expenses, as well as travel and other expenses, which are reasonably incurred by Secured Party. Debtor agrees that Secured Party may apply any proceeds from disposition of Collateral first to security interests, liens, or encumbrances prior to the security interest of Secured Party.

**8. WAIVER.**

DEBTOR HEREBY ACKNOWLEDGES THAT THE LIABILITIES AROSE OUT OF A "COMMERCIAL TRANSACTION" AS THAT PHRASE IS DEFINED IN O.C.G.A. §44-14-260(1) (CONCERNING FORECLOSURE OF MORTGAGES ON PERSONAL PROPERTY), AND AGREES THAT AFTER ANY EVENT OF DEFAULT, SECURED PARTY SHALL HAVE THE RIGHT TO AN IMMEDIATE WRIT OF POSSESSION WITHOUT NOTICE OR HEARING. DEBTOR KNOWINGLY AND INTELLIGENTLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO ANY NOTICE OR POSTING OF A BOND BY SECURED PARTY PRIOR TO SEIZURE BY SECURED PARTY (OR SECURED PARTY'S TRANSFEREES, ASSIGNS, OR SUCCESSORS IN INTEREST) OF THE COLLATERAL OR ANY PORTION THEREOF. THIS IS INTENDED BY DEBTOR AS A "WAIVER" AS DEFINED IN O.C.G.A. §44-14-260(3) (RELATING TO FORECLOSURE OF MORTGAGES ON PERSONAL PROPERTY).

**9. NOTICE.**

If any notification of intended disposition of the Collateral or of any other act by Secured Party is required by law and a specific time period is not stated therein, such notification, if mailed by first class mail at least five days before such disposition or act, postage prepaid, addressed to Debtor either at the address shown below, or at any other current address of Debtor provided to Secured Party by Debtor or appearing on the records of Secured Party, shall be deemed reasonably and properly given.

**10. NON-WAIVER OF RIGHTS AND REMEDIES.**

No delay or failure on the part of Secured Party in the exercise of any right or remedy shall operate as a waiver thereof, or of the exercise of any other right or remedy. Time is of the essence of this Agreement.

**11. CONSTRUCTION.**

This Agreement shall be governed by and construed in and enforced in accordance with the laws of Georgia. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The headings in this Agreement are

for convenience only and are not a substantive part of this Agreement.

**12. BENEFIT.**

The rights and privileges of Secured Party hereunder shall benefit its successors and assigns.



IN WITNESS WHEREOF, Debtor has caused this Mortgage and Security Agreement to be executed and delivered as of January 8, 1993.

[Seal]

WILLIAM C. MEREDITH COMPANY

Attest:

  
Assistant Secretary

By:

  
Cleveland G. Meredith  
President

Principal Place of Business:

2335 Lawrence Street  
East Point (Fulton County), Georgia 30364

Other Places of Business and All Locations of Collateral:

Preston Drive  
Fitzgerald (Ben Hill County), Georgia 31750

STATE OF GEORGIA  
COUNTY OF FULTON

)  
) SS.:  
)

On this 8th day of January, 1993, before me personally appeared Cleveland G. Meredith, to me personally known, who, by me being duly sworn, says that he is the President of William C. Meredith Company, and that the foregoing Mortgage and Security Agreement was signed on behalf of that Company by authority of its board of directors, and he acknowledged that the execution of the foregoing Mortgage and Security Agreement was the free act and deed of that Company.

[Seal]

  
Notary Public

My commission expires: Notary Public, Fulton County, Georgia  
My Commission Expires January 3, 1995.